

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

DECEMBER 17, 2008

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **December 17, 2008** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive, Paul Babb.

ROLL CALL

10 present, 2 absent. Commissioners Moodry and Frasz were excused.

PRAYER

Commissioner Fay led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF DECEMBER 3, 2008

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to approve the Minutes of the December 3, 2008 Regular Meeting.

ITEM NOT ON THE AGENDA – SUSPENSION OF THE RULES

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a roll call vote of 10 yeas, 0 nays and 2 absent that in accordance with the provisions of Section 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Communication No. 08-821 to be added to the agenda of tonight's Regular Meeting of the Council.

PUBLIC COMMENT AN ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb informed the Council that he had a meeting with Montana Resources on Monday. Rumors were going around that they were going to

suspend operations. He said he met with their management staff on Monday and all of those rumors are false. They say that they are going to be able to ride out any of the storm that may be brewing with the low mineral prices. They feel that they are one of the low-cost producers in the country and they feel that they are doing just fine.

We are working on the NRD position for Butte. We have put together a series of questions that have gone to Carol Fox . She has replied back to me on where the funding would come from, how the work load would be distributed, how it would interface with our staff and she is going to set up a meeting so she can go over that in person.

We've been working with all elected officials and department heads with a deadline of this Friday for the new budget and the way that it will be presented. Also last week we had a meeting with all the newly elected officials. Introduced them to all of our staff. Gave out budget books.

SECTION I

PUBLIC HEARING

FOR THE PURPOSE TO SOLICIT COMMENTS REGARDING THE AMENDING OF THE FY 08-09 BUDGET TO CREATE BUDGET AUTHORITY FOR THE RECEIPT OF UNANTICIPATED REVENUE FROM THE BUTTE-SILVER BOW HOUSING AUTHORITY. (Communication No. 08-764 being held in Committee of the Whole) **Proof of publication was noted and placed on file.**

Captain Doug Conway represented Sheriff Walsh tonight. He is here to answer any questions that Council may have.

Chief Executive Babb opened the public hearing at 7:35 PM and called for any proponents. On the third and final call there being none he called for any opponents. Chief Executive Babb spoke in favor of this budget amendment. Again, there was no response so he closed the public hearing at 7:36PM

SECTION II

PUBLIC HEARING

FOR THE PURPOSE TO SOLICIT PUBLIC COMMENTS ON THE REDEVELOPMENT PROPOSALS RECEIVED FOR THE 400 BLOCK OF E. PARK STREET, LEGALLY DESCRIBED AS LOTS 5 AND 9 OF THE LIZZIE LODE, M.S. 795, SECTION 18, TOWNSHIP 3 NORTH, RANGE 7 WEST, BUTTE-SILVER BOW, MONTANA (PARCEL NO. 00019.6925) AND LOTS 10 AND 11 OF THE LIZZIE LODE, M.S. 795, SECTION 18, TOWNSHIP 3 NORTH, RANGE 7 WEST, BUTTE-SILVER BOW, MONTANA (PARCEL NO. 000711300). (Communication No. 08-784 being held in Committee of the Whole) **Proof of publication was noted and placed on file.**

Dori Skrukrud, gave the staff report and pointed out that they should have a summary on both the 400 block E. Park and the 1100 block of Caledonia Street.. On the 400 block of E. Park Street there are two sites and an applicant can make an application for either site individually or the two sites combined. They did receive two proposals and those were both for Sites One and Two. One is Killgore Development, LLC, whose proposal is to build some senior housing units. The second application was from Dr. Robert F. Wilcox and Erik Johnson, who are proposing to construct a professional office space which will include a dental office.

The Chief Executive opened up the public hearing at 7:40 PM and called for any comments. Brad Killgore, 151 Moose Creek Road of Killgore Development. He said they feel there is a need for senior housing and we felt that was a great location. No one else came forward on the third and final call so he called the public hearing closed at 7:41 PM.

SECTION III

PUBLIC HEARING

FOR THE PURPOSE OF SOLICITING PUBLIC COMMENTS ON REDEVELOPMENT PROPOSALS RECEIVED FOR THE 1100 BLOCK OF CALEDONIA STREET, LEGALLY DESCRIBED AS WEST 14' OF LOT 8, BLOCK 10, OF THE VOLUNTEER ADDITION NO. 1, SARSFIELD LODGE, PORTION TO COMPLETE, SECTION 14, TOWNSHIP 3 NORTH, RANGE 8 WEST, BUTTE-SILVER BOW, MONTANA (PARCEL NO. 001277230). (Communication No. 08-785 being held in Committee of the Whole.) **Proof of publication was noted and placed on file.**

Dori Skrukrud gave the staff report. She said they did get did get an appraisal on the property. She said they got four proposals which are:

A Single proposal for site 1 and 2 applications for site 2 and 1 for the entire site.

Site 1 JAC Ventures, Keith Johnston and Dennis Crowley for a 4-unit condo/apartment building.

Site 2 Kathy McArthur, John Paul and Jim Pendergast for a green open Space

JAC Ventures, Keith Johnston and Dennis Crowley for a 4-unit Condo/apartment building.

Entire Site - Diocese of Helena to develop a parking lot for the Immaculate Conception Parish

Commissioner O'Leary asked if the Parks and Recreation would be responsible for the upkeep of the open space. Ms. Skrukrud replied that it would be maintained by the neighbors.

Commissioner Coleman said he was concerned about liability if someone was injured on this property. Ms. Skrukrud replied that a decision has not been made. That is of a concern to us also.

Commissioner Foley said he understands that we went into the reserves to demolish the IC School. We should be able to recoup some of that investment by developing that property. Ms Skrukrud said that is clearly the criteria that they use.

Chief Executive Babb then opened the public hearing at this time and called for any comments. Dennis Crowley with JAC Ventures said they feel there is a need for upper end rental property in Butte. They will make sure that the outside of the complex will fit in with the neighborhood.

Jim Prendergast, 401 N. Western, said that if the property is purchased by us said the neighbors would post the property. They as owners would have insurance.

Father Robert Hall, pastor of Immaculate Conception parish, said they are talking about \$100,000.00 investment. We would also help the neighborhood when there is a need for parking.

Trudy Tomazich, 32 W. Daly Street, member of the Council for the Butte Catholic North, encourages the council to consider the proposal to acquire the lots.

John Paul, 1139 Caledonia, said they would be responsible property owners, making sure the property was safe, insured and well-maintained.

Kevin O'Neill, 530 N. Ewing Street, Helena, Montana, spoke on behalf of the Bishop Thomas.

Andrea O'Shea, 1135 Caledonia, said her concern is condos across from the Immaculate Conception Church. The house she owns and the three others on the other corners were built in the Mission Style the same as the church. It's a historical neighborhood. She is fine with the parking lot or the green area.

On the final call for comments, Chief Executive Babb closed the Public Hearing at 8:00 PM.

SECTION IV

PUBLIC HEARING

FOR THE PURPOSE TO SOLICIT COMMENTS REGARDING THE ALLOCATION OF THE 2008 BULLETPROOF VEST GRANT (BVP) FUNDS FROM THE UNITED STATES DEPARTMENT OF JUSTICE. (Communication No. 08-787. **Proof of publication was noted and placed on file.**

Chief Executive Babb opened the public hearing at 8:01 PM and called for any proponents. On the third and final call there being none, he called for opponents. Again, there was no response so he called the public hearing closed at 8:02 PM.

SECTION V

PRESENTATION COMMUNICATION NO. 08-733

John M. Moodry, Weed Department, requesting time on the 12/17/08 agenda to make a presentation with results from our first year's implementation of Ordinance No. 196 in Butte-Silver Bow.

John Moodry, Director of the Weed Department, came to the microphone and told the Council his department took over enforcement of Ordinance No. 196 a year ago with budgetary authority from this council. We were asked to give a presentation and update at this time to show how our first year was completed. He then showed a Power Point presentation.

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to place Communication No. 08-733 on file.

SECTION VI

CONSENT AGENDA

- A.
 - 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 - 3. JUDICIARY COMMITTEE MEETING REPORT
 - 4. PUBLIC WORKS COMMITTEE MEETING REPORT

B.

COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any "friendly amendments" or segregations. Commissioner O'Leary segregated Communication No. 08-797.

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and seconded by Commissioner Lee and carried by a unanimous verbal vote to approve

the Consent Agenda, Section A, Items 1 through 4 and Section B, Items 1 through 22 with the exception of the item segregated.

Segregation

08-797 Robert A. Macioroski, Director Land Office, requesting County Attorney be directed to prepare a resolution and documentation for transfer of storm sewer easement from Frank Antonoli.

Commissioner O’Leary stated the owner of record is Mary Antonoli. He would like the ownership issue worked out before we ask the County Attorney for a resolution. **He then moved to refer Communication No. 08-797 to Committee of the Whole to be certain of ownership. The motion was seconded by Commissioner Lee and carried with a unanimous verbal vote.**

SECTION VII COMMUNICATIONS TO BE READ AND ACTED UPON

1. 08-814 Brad Johnson, Secretary of State, requesting Council choose nominee to fill two vacancies because of the death of Representative Groesbeck for current term in House District 74 and Representative-elect in House District 774 commencing 1/5/09. **It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to send Communication No. 08-814 to Committee of the Whole.**

2. 08-821 **Emergency Communication** – David Coleman, Chairman of the Butte-Silver Bow Democratic Party, submitting a list of replacement candidates for the vacancy in the House District No. 74 legislative seat created by the untimely and unexpected death of Representative George Groesbeck, Jr. on December 7, 2008.

Two of the candidates, Mr. Art Noonan and Mr. Bob Pavlovich, are present tonight to be interviewed. Mr. Noonan was asked to wait in Ed Heard’s office while Mr. Pavlovich was interviewed by the Council. Each candidate was asked similar questions. Commissioners voted and votes were tallied by Council Secretary. The vote was 10 votes for Art Noonan and 0 for Pavlovich.

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to send the results of this special election to the Secretary of State and place the Communication on file.

2. 08-817 Dick Nicholls, 1209 W. Silver, requesting time on the agenda to seek council approval for demolition of 1207 W. Silver Street.

Dick Nicholls, 1209 W. Silver, handed out copies from different contractors stating what it would take to fix the property. Also pictures of the building are attached. He purchased the house at 1207 W. Silver in October of 2006. We did put a roof on it with the idea we would be able to turn it into passive income down the road. He doesn't have the money to fix this house. This house has a sand foundation and quite a bit of mold in the basement.. He would like to develop the property into a courtyard and landscape it.

Commissioner Foley spoke in favor of Mr. Nicholls request. Commissioner Coleman said he supported him also. We have a ordinance that deals with these properties but the drafter of this have not finished and kept their end of the bargain. These are done on a case by case basis. We're not necessarily setting precedents here. Commissioner Shaw said she voted for the ordinance 2 years ago and I know that we have guidelines that are still being developed. My biggest concern here is undermining the credibility of the ordinance. I will have to stand by the recommendation of our appointed authorities. Commissioner Sorich said it doesn't sound like this house has whole lot of historic value. I believe it's got to go.

Chief Executive Babb asked that we let Mr. Carrig makes his presentation before going any further with discussion.

3. 08-818 Chuck Carrig, Butte-Silver Bow Historic Preservation Officer, requesting time on the agenda to present rational for Historic Preservation Commission's denial of the demolition permit for 1207 W. Silver Street.

Mr. Carrig gave handouts to the commissioners and then gave a power point presentation in support of the Historic Preservation's decision to deny Mr. Nicholls demolition request.

Commissioner Coleman asked is this house on the National Register of Historic Landmarks? Mr. Carrig said by default any property in the National Historic Landmark District is eligible for that plaque and is listed on the National Register of Historic Places. It does not have a plaque in front of it. Commissioner Foley

asked Chief Executive Babb how he stands on this issue. Mr. Babb replied that he supports the ordinance and his staff and if it comes down to a tie he will be voting to support the ordinance.

It was moved by Commissioner Shaw and seconded by Commissioner O’Leary to deny the request to Mr. Nicholls to not go along with the Historic Preservation’s recommendation. On the question, Commissioner Coleman made a substitute motion that we approve the request. Commissioner Foley seconded the motion. On the question Commissioner O’Leary asked Karen Byrnes if there is now or do you see any hope in the future of Community Development having money that could be made available to people such as Mr. Nicholls? Karen Byrnes said there is not a pot of money at this point in time that is controlled by any government department that she is aware of. There’s always hope that there could be one in the future. Commissioner Mulcahy asked for a restatement of the motion. Commissioner Coleman said that he moved to approve this property for demolition and place this communication on file. Commissioner Foley seconded the motion. A roll call vote of 6 yeas and 4 nays. Voting nay were Commissioners Shaw, O’Leary, Fay and Lee.

SECTION VIII

ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY

1. COUNCIL RESOLUTION NO. 08-100

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING THAT PORTION OF THE ALLEY WITHIN BLOCK 1 OF THE TRASK ADDITION WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN.

2. COUNCIL RESOLUTION NO. 08-101

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW COMMUNITY DEVELOPMENT DEPARTMENT FROM THE UNITED STATES DEPARTMENT OF JUSTICE TO THE CITY AND COUNTY OF BUTTE-SILVER BOW TO BE EXPENDED ON BULLETPROOF VESTS FOR LAW ENFORCEMENT OFFICERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**SECTION IX ORDINANCES AND RESOLUTIONS –
FINAL PASSAGE**

**1. COUNCIL BILL NO. 08-7
ORDINANCE NO. 08-7**

AN ORDINANCE AMENDING SUBSECTION 9.01 OF SECTION 4 OF BUTTE-SILVER BOW ORDINANCE NO. 204 AND CHAPTER 10.32 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “STOP SIGNS” AND SECTION 10.32.010(g), (m), (s) and (t) B-SB MC; PROVIDING THAT TRAFFIC PROCEEDING ALONG GALAXY DRIVE SHALL STOP BEFORE ENTERING THE INTERSECTION OF GALAXY DRIVE AND MILKY WAY; PROVIDING THAT TRAFFIC PROCEEDING ALONG GALAXY DRIVE SHALL STOP BEFORE ENTERING THE INTERSECTION OF GALAXY DRIVE AND MEADOWLARK LANE AND TRANQUILITY LANE, PROVIDING THAT TRAFFIC PROCEEDING ALONG MEADOWLARK LANE SHALL STOP BEFORE ENTERING THE INTERSECTION OF MEADOWLARK LANE AND GALAXY DRIVE; PROVIDING THAT TRAFFIC PROCEEDING ALONG STATE STREET SHALL STOP BEFORE ENTERING THE INTERSECTION OF STATE STREET AND SHERMAN STREET; PROVIDING THAT TRAFFIC PROCEEDING ALONG TRANQUILITY LANE SHALL STOP BEFORE ENTERING THE INTERSECTION OF TRANQUILITY LANE AND GALAXY DRIVE AND MEADOWLARK LANE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a roll call vote of 10 yeas, 0 nays and 2 absent to place Council Bill No. 08-7, Ordinance No. 08-7 on final reading and passed.**

ADJOURN

There being no further business to come before the Council, it was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote of Rise to the Call of the Chair.

The meeting adjourned at 10:05 PM,

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER

